

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Introduction of Ordinance No. 1683 Establishing Chapter 2.34, Administrative Procedures, of the Lodi Municipal Code

MEETING DATE: November 3, 1999

PREPARED BY: City Attorney

RECOMMENDATION: That the City Council introduce the attached Ordinance.


BACKGROUND: In January of 1999, the California Court of Appeals, 4th District, Division II decided the case of Haas v. County of San Bernardino. In February of that same year, the Court ordered the Opinion to be published thereby establishing a case with precedential value. The subject matter of the Haas case was centered around how the County of San Bernardino selected its hearing officers to handle administrative hearings. I am sure you will remember that when the administrative matter which was undertaken against M&P Investments and David Mustin, you heard counsel for David Mustin make an argument to you based upon the Haas case that our administrative procedure was flawed.

Out of an abundance of caution, we have undertaken to develop a comprehensive Administrative Procedures Chapter for the Lodi Municipal Code. This Chapter is developed in part to answer the Haas decision and to put us in a position should that decision remain in place to be able to absolutely argue against any claim that the selection of hearing officers in our administrative matters is not in compliance with State or Federal due process requirements.

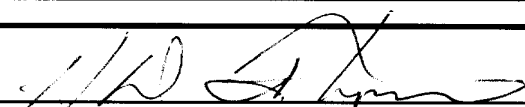
In closing, it should be noted that the Haas case has moved up the judicial ladder and will be considered by the California Supreme Court. The expected outcome at this time is that the California Supreme Court will return to the rather long-standing law in the State of California that it is necessary in order to challenge a hearing officer for the challenging party to demonstrate an actual bias in order to have a hearing officer removed.

Funding: Not applicable.

Respectfully submitted,


Randall A. Hays

APPROVED: _____


H. Dixon Flynn -- City Manager

ORDINANCE NO. 1683

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
AMENDING TITLE 2 - ADMINISTRATION AND PERSONNEL OF THE
LODI MUNICIPAL CODE BY ADDING CHAPTER 2.34, RELATING TO
ADMINISTRATIVE PROCEDURES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS::

Section 1. Lodi Municipal Code Title 2 - Administrative Procedures, Chapter 2.34
Administrative Procedures is hereby added to read as follows:

Title 2
ADMINISTRATION AND PERSONNEL
Chapter 2.34
ADMINISTRATIVE PROCEDURES FOR
ADMINISTRATIVE PROCEEDINGS

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ARTICLE I. HEARING OFFICERS

SECTION 2.34.10 GOALS AND PURPOSES

The goals and purposes of this Chapter are:

- (1) to establish just, efficient and expeditious procedures to assure the fair and impartial hearing and determination of properly referred matters by competent and experienced Hearing Officer(s);
- (2) to create the position of, and to provide for the unbiased selection and appointment of, Municipal Hearing Officer(s) for conducting hearings and making Recommended Findings of Facts, Conclusions of Law and Final Orders on matters properly referred to Hearing Officers pursuant to this Code; and
- (3) to establish a rotation system for assigning to Hearing Officers matters properly referred pursuant to this Municipal Code.

SECTION 2.34.20 DEFINITIONS

Unless otherwise expressly stated, whenever used in this Chapter, the following terms shall have the meanings set forth below:

- (1) The term “**Business Days**” shall include every day except Saturdays, Sundays, and official holidays recognized by the California State Courts.
- (2) The term “**Enforcing Officer**” shall mean the City of Lodi Director of Public Works, the Water/Wastewater Superintendent of the Public Works Department of the City of Lodi, and such other person(s) duly designated by the City Council of the City of Lodi.
- (3) The term “**Hearing Officer**” shall mean any person appointed to the position of Municipal Hearing Officer by the City Council pursuant to section 2.34.40 of this Chapter.
- (4) The term “**Interview Committee**” shall mean the committee established pursuant to section 2.34.40(6) of this Chapter to interview prospective Hearing Officers.
- (5) The term “**Proceeding**” shall mean any action or hearing, specifically including any matter authorized by this Municipal Code to be referred to a Hearing Officer, in which testimony can be compelled to be given or documents of any kind can be compelled to be produced.
- (6) The term “**Referral Roster**” shall mean the list of Hearing Officers maintained by the Office of the Human Resources Director pursuant to section 2.34.50(3).
- (7) The term “**Rotation List**” shall mean the list of Hearing Officers maintained by the Human Resources Director pursuant to section 2.34.50(1).
- (8) The term “**Registry of Municipal Hearing Officers**” shall mean the list of Hearing Officers maintained by the Human Resources Director pursuant to section 2.34.40(1).

SECTION 2.34.30 QUALIFICATIONS AND CRITERIA

(1) *Qualifications.* In order to be eligible for appointment as a Hearing Officer, all applicants must satisfy the following minimum requirements:

(a) *Recommendations.* All applicants must have a written recommendation from both:

(i) an eligible member of the judiciary. For purposes of this subsection (1)(a)(i), an eligible member of the judiciary shall be (a) either an active member of the judiciary or a member of the judiciary who has retired within three (3) years of the date the application is filed; and (b) a member of the judiciary before whom the applicant has practiced for at least three (3) years;

(ii) an eligible member of the California bar. For purposes of this subsection (1)(a)(ii), an eligible member of the bar shall be an active member of the bar for fifteen (15) years who has personal knowledge of (a) the skill of the applicant in an adversarial setting and (b) the ethical qualifications of the applicant.

(b) *Experience.*

(i) All applicants must be an active member of the Bar of the State of California in good standing and must have been such for at least ten (10) continuous years immediately preceding their application for a Hearing Officer position. Of those ten (10) years, at least seven (7) must have included the regular preparation and litigation of civil or criminal cases before the state or federal courts or administrative cases before state or federal administrative law judges, including the presentation of evidence, the conduct of direct and cross-examination of witnesses, and oral advocacy before state or federal courts or before state or federal administrative law judges.

(ii) All applicants must have successfully completed at least two (2) judicial appointments as a special master, judicially appointed arbitrator, referee or mediator in either the federal courts or the superior courts for the State of California within the seven (7) year period immediately preceding their application.

(iii) All applicants must have a demonstrated command of administrative law. For purposes of this subsection (1)(b)(iii), a command of administrative law shall be evidenced by the applicant's presentation of evidence, the presentation and cross-examination of witnesses and oral advocacy in an administrative forum in three (3) instances in the last five (5) years preceding application.

(c) *Exceptions.* The following person(s) shall be exempt from subsection 2.34.30(1):

(i) Any person who is, at the time of application, a retired member of the state or federal judiciary in good standing and who is an active member in good standing of the Bar of the State of California;

(ii) Any person who has resigned or retired in good standing from the

position of administrative law judge with the federal or state governments following three (3) or more years of continuous service and who is an active member in good standing of the Bar of the State of California; or

(iii) Any person who, within three (3) years of the date their application is filed, has received at least five (5) appointments to act as a referee or settlement judge in any of the superior courts of the State of California or as a special master or settlement judge in any of the federal courts.

(2) *Criteria.* The following criteria shall be relevant to the selection of a Hearing Officer and shall be considered:

- (a) Judicial or quasi-judicial experience;
- (b) Ability to act impartially; and
- (c) Availability to timely and competently preside over hearings of referred matters and to carry out the responsibilities of a Hearing Officer.

SECTION 2.34.40 PROCEDURE FOR EVALUATION

(1) *Registry of Municipal Hearing Officers.* Within thirty (30) business days from the effective date of this Ordinance, the Human Resources Director shall establish a Registry of Municipal Hearing Officers which shall consist of no more than three (3) Hearing Officers. Hearing Officers shall be promptly added to the Registry upon selection pursuant to the procedures established in this section 2.34.40. Hearing Officers shall be promptly deleted from the Registry upon resignation or upon termination by the City Council.

(2) *Advertisement for Hearing Officers.* Each year on the anniversary of the effective date of this Chapter and at such other times as the City Council shall direct, the Human Resources Director, unless otherwise directed by the City Council, shall cause to be published in the *Lodi News-Sentinel* for a period of two (2) weeks, a notice requesting applications for the position of Municipal Hearing Officer. This notice shall identify the materials that must be submitted to the Human Resources Director to constitute a complete application and the deadline for that submission.

(3) *Reference to City Council.* After the expiration of the application deadline set forth in the Advertisement for Hearing Officer notice, the Human Resources Director will submit to the City Manager and the City Council a list of eligible applicants who have timely submitted a complete application for the position of Hearing Officer and who satisfy the minimum requirements set forth in section 2.34.30. A complete Hearing Officer application shall include, at a minimum, a completed Hearing Officer Contract Position Application, a summary of qualifications, a detailed, current and complete resume, and at least two (2) recommendations as required in section 2.34.30(1)(a). No applicant for the position of Hearing Officer who has not timely submitted a complete Hearing Officer application to the Human Resources Director shall be included on the list of eligible applicants submitted to the City Manager and the City Council.

(4) *Scheduling of Interviews of Hearing Officers.* Within two (2) weeks after the Human Resources Director has submitted to the City Manager and the City Council the list of eligible applicants for the position of Hearing Officer, the City Manager shall contact the references provided

by the applicants and obtain their evaluation of the applicant's competence and experience, and notify all eligible applicants of the opportunity to be interviewed by the Interview Committee as constituted pursuant to subsection 2.34.40(6).

(5) *Interviews With Hearing Officers.* Eligible applicants will be scheduled for interviews. Interviews may be conducted, at the sole discretion of the City Manager and the City Council, either in person or by telephone. All interviews must be completed within thirty (30) business days from the date on which the list of eligible applicants for the position of Hearing Officer has been submitted to the City Manager and the City Council.

(6) *Interview Committee.* Eligible applicants shall be interviewed by an Interview Committee. The Interview Committee shall consist of the City Manager and no more than two (2) members of the City Council. The Interview Committee may invite any active or retired Professor of Law to participate in the interview process, if the Interview Committee believes that such participation will contribute value to the Hearing Officer selection process.

(7) *Selection of Hearing Officers.* The Interview Committee shall, after a review of the qualifications of the applicants and the criteria enumerated in section 2.34.30, after all interviews have been completed, and only after due consideration of the competence and impartiality of the applicants, recommend to the City Council the appropriate number of Hearing Officer(s) from the list of applicants prepared by the Human Resources Director for selection. The City Council will select the Hearing Officer(s) from among those applicants recommended by the Interview Committee. The person(s) selected by the City Council must enter into a contract with the City of Lodi to perform Hearing Officer services. Under no circumstances shall the City Attorney, or any Deputy or Assistant City Attorney, regardless of how employed or retained by the City, or any member of any of their staff, participate in any aspect of the Hearing Officer selection process.

(8) *Resignation or Termination of Hearing Officers.* Hearing Officers may resign and are subject to termination by the City Council.

(a) *Resignation.* In the event that a Hearing Officer seeks to resign, the Hearing Officer shall tender such resignation in writing to the City Council. Absent exigent circumstances which are approved by the City Council, resignations cannot become effective until such time as those proceedings before the Hearing Officer have been adequately disposed of.

(b) *Termination.* Hearing Officers may be terminated by the City Council without cause.

SECTION 2.34.50 PROCEDURE FOR REFERRAL

(1) *Rotation.* Each time that a Hearing Officer is added to the Registry of Hearing Officers, the Human Resources Director shall create and maintain a confidential, randomly ordered list of all Hearing Officers on the Registry of Municipal Hearing Officers which shall be known as the Rotation List. The Rotation List of Hearing Officers shall be reordered at random intervals determined appropriate by the Human Resources Director, with due consideration being given to the then existing workload of the Hearing Officers. Each referral from the Human Resources Director to a Hearing Officer shall be made sequentially from the Rotation List as it is then constituted.

(2) *Initiation of Hearing Officer Referral.* Immediately upon the Human Resources Director's receipt of a filing that, pursuant to any provision of this Code requires reference to a Hearing Officer, the Human Resources Director will determine from the Rotation List which Hearing Officer is next eligible for service.

(3) *Availability to Accept Referral.* Upon the Human Resources Director's determination of eligibility, the Human Resources Director will immediately contact the next eligible Hearing Officer to determine his or her availability to accept referral of the matter and to address and resolve all issues within the time frames required by the Administrative Procedures set forth at Article II of this Chapter. In the event an eligible Hearing Officer is unavailable for purposes of timely handling the referral, the Human Resources Director shall note that fact in the Hearing Officer Referral Roster to be maintained in the Office of the Human Resources Director and shall promptly contact the next eligible Hearing Officer from the Rotation List.

(4) *Certification of Impartiality.* Upon referral of a matter to a Hearing Officer, that Hearing Officer shall certify in writing as soon as practicable at the outset of the Proceeding that the Hearing Officer has conducted an appropriate inquiry and determined that there exists no conflict of interest or other ethical impediment which would prevent that Hearing Officer from presiding over the referred Proceeding. The determination of a conflict of interest or other ethical impediment shall be determined pursuant to the Rules of Professional Conduct of the State Bar of California and pursuant to the California Rules of Judicial Conduct applied as though the Hearing Officer is a member of the judiciary. This written certification must be lodged with the Human Resources Director and filed in the case file of the referred matter.

(5) *Contact of Parties.* Upon receipt of the referred matter, the Hearing Officer shall promptly contact the parties to the matter or their counsel if one appears of record to schedule an appropriate timeline for the Proceeding consistent with the applicable provisions of this Code.

SECTION 2.34.60 DISQUALIFICATION

Any person designated to serve as a Hearing Officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified in a court of law. For purposes of this section 2.34.60, the peremptory challenge available pursuant to California Code of Civil Procedure section 170.6 shall not apply.

ARTICLE II. ADMINISTRATIVE PROCEDURES

SECTION 2.34.70 INITIATION OF PROCEEDING, RESPONSE THERETO AND HEARING PROCEDURES

(1) *Applicability.* This Article II of this Chapter 2.34 shall apply exclusively to Proceedings arising under Chapters 8.22 and 8.24 of the Municipal Code and to such other matters as the City Council may from time to time by Ordinance prescribe.

(2) *Initiation of Proceedings.* A Proceeding under this Chapter 2.34 shall be commenced by referral of any matter to a Hearing Officer by the Human Resources Director as authorized by any provision of this Code.

(3) *Powers and Authority of Hearing Officer.* Upon referral of a qualifying matter by the Human Resources Director, the Hearing Officer shall have and may exercise in any resulting Proceeding, the power to regulate all Proceedings in every hearing held and to do all acts and take all measures necessary or proper for the efficient performance of assigned duties under this Code. Without limiting the foregoing, the Hearing Officer shall have and may exercise in any Proceeding on any matter referred the following powers:

(a) to hear and decide any issues properly brought before the Hearing Officer on matters authorized to be referred to a Hearing Officer pursuant to this Municipal Code;

(b) to require the production of evidence upon all matters properly before the Hearing Officer, including the production of all books, papers, vouchers, documents, and writings applicable to the hearing;

(c) to determine any "preliminary facts," as that term is defined by Evidence Code § 400, including claims of privilege, in any Proceeding before the Hearing Officer in the same manner as a court determines such a fact or claim;

(d) to rule upon the admissibility of evidence;

(e) to put witnesses, including parties to the Proceeding, under oath and to examine such witnesses;

(f) to make or cause to be made a record of the evidence offered and excluded;

(g) to issue appropriate findings of facts, conclusions of law and a recommended order, as necessary, following review of and, if appropriate, a Proceeding on, all such matters appropriately brought before him or her;

(h) to hold any person that is a party to a Proceeding in contempt to the full extent authorized by law;

(i) to regulate all Proceedings in every hearing brought; and

(j) to take any and all measures necessary or proper for the efficient performance of the Hearing Officer's duties under this Code.

(4) *Initial Case Management Conference.* Within fourteen (14) business days following the initiation of a Proceeding, the Hearing Officer shall hold an initial case management conference for the purposes of:

(a) expediting the disposition of the Proceeding;

(b) establishing early and continuing control of the Proceeding and Pre-Proceeding activities in order to preclude delay resulting from a lack of management or lack of diligence by any of the parties or their counsel;

(c) discouraging wasteful or inefficient pre-Proceeding activities;

(d) improving the quality of the Proceeding through more thorough and focused preparation;

(e) determining the need, if any, for a responsive pleading; and

(f) establishing a schedule for discovery, if any.

(5) *Scheduling.* Absent exceptional circumstances, the Hearing Officer shall schedule all necessary and appropriate pre-hearing motion practice, if any, and discovery set forth in subsection 2.34.70(6) of this Chapter so as to permit the commencement of hearings at the earliest appropriate date, but in no event more than one hundred and fifty (150) calendar days from the initiation of the Proceeding.

(6) *Discovery.*

(a) Upon the initiation of a Proceeding, no discovery will be permitted unless and until authorized by the Hearing Officer at the initial case management conference.

(b) In the event that the Hearing Officer determines that discovery will focus issues and will not result in unnecessary delay, the Hearing Officer may authorize the implementation of a discovery plan. Absent a compelling showing of exigent circumstances, the Hearing Officer shall limit any authorized discovery plan for any propounding party to no more than thirty-five (35) written interrogatories, twenty-five (25) requests for the production of documents, twenty-five (25) requests for admissions, and five (5) depositions. If the Hearing Officer determines in the Hearing Officer's sole discretion that due process would not be compromised and the hearing of the matters at issue would not be significantly assisted by the discovery plan proposed by the propounding parties, discovery may be substantially limited below the foregoing limits or may be precluded altogether.

(7) *Burdens of Proof.* The person initiating the Human Resources Director's referral of the matter to the Hearing Officer shall have the burden of proving by clear and convincing evidence that the matter being complained of is manifestly unreasonable, unauthorized by the Ordinance, or otherwise contrary to law.

(8) *Hearing Procedures.*

(a) The Proceeding need not be conducted according to technical rules relating to evidence and witnesses. Subject to the Hearing Officer's reasonable discretion to control the proceedings before him, any non-Privileged, relevant evidence shall be admitted. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a necessary finding unless it would be admissible over objection in judicial civil actions. The rules of privilege shall be effective to the extent that they are required by statute to be recognized at the Proceeding. Irrelevant and unduly repetitious evidence shall be excluded.

(b) In the event that the presentation of oral evidence is authorized by the Hearing Officer, oral evidence shall be taken only upon oath or affirmation.

(c) Subject to the Hearing Officer's discretion to control and direct the proceedings before him, each party may call and examine witnesses on relevant matters, introduce relevant and probative exhibits, cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, impeach any witness regardless of which party first called him to testify, and rebut adverse evidence.

(d) The Hearing Officer shall direct a duly licensed court reporter to prepare a record of the Proceeding which shall be made available to the Hearing Officer and all parties to the Proceeding. The court reporter shall be arranged for, and the cost of the reporting service and only the original transcript shall be paid for by the City.

(e) The Hearing Officer shall have authority to control the course of the Proceeding and the conduct of argument and shall rule on the admissibility of evidence. The Hearing Officer shall further have the authority, *sua sponte*, or, at the request of any party to the Proceeding, subject to the opposing party's right to move to quash, to issue subpoenas or subpoenas *duces tecum* signed and sealed but otherwise in blank to compel the attendance and testimony of witnesses and the production of documents and information at any Proceeding or at any deposition authorized by him to be taken in preparation for the Proceeding. Any party requesting a subpoena shall be required to complete the subpoena form prior to its service.

(f) Any Proceeding may be continued for a reasonable time only upon a showing of exceptional circumstances.

(9) *Determination of Claim of Privilege.* The Hearing Officer shall determine a claim of privilege in any Proceeding in compliance with Cal. Evid. Code §§ 400 *et seq.*

(10) *Recommended Final Order.* The Hearing Officer shall issue and file with the Human Resources Director a final written recommended final order which shall set forth the findings of fact and conclusions of law upon which it is based on or before the fifteenth (15th) business day following the hearing.

(11) *Special Procedures for Trade Secret Proceedings.* The following procedure shall apply whenever any holder of an alleged trade secret seeks to protect that alleged trade secret from discovery or disclosure as a result of any Proceeding hereunder:

(a) The holder of the alleged trade secret shall file a motion for a protective order with the Human Resources Director. The motion shall include an affidavit based upon personal knowledge listing the affiant's qualifications to give an opinion concerning the trade secret at issue, identifying, without revealing, the alleged trade secret and presenting evidence that the secret qualifies as a trade secret under 18 U.S.C. § 1905, under Cal. Evidence Code § 1060, under Cal. Civil Code § 3426.1(d), or under Cal. Health & Safety Code § 25538. Upon the filing of the motion for Protective Order, the Human Resources Director shall select a Hearing Officer who shall initiate a Proceeding as set forth at subsection 2.34.70(2) of Chapter 2.34.

(b) The request for the protective order may be opposed by submitting affidavits to the Hearing Officer based upon the affiant's personal knowledge. The affidavits shall be filed under seal, but shall be provided to the person seeking the protective order and to the Enforcing Officer. Neither the holder of the trade secret nor any party to the Proceedings, including the

Enforcing Officer or the Hearing Officer, may disclose the affidavit to persons other than to counsel of record without prior approval of the Hearing Officer.

(c) The person seeking the Protective Order must show, by a preponderance of the evidence, that the issuance of a protective order is proper.

(d) The Hearing Officer may rule on the request without holding an evidentiary hearing. However, at the Hearing Officer's discretion, the Hearing Officer may choose to hold an *in camera* hearing concerning disputed trade secret with only the holder of the trade secret, the Enforcing Officer and counsel for the Enforcing Officer present. If the Hearing Officer holds such a hearing, the parties' right to examine witnesses shall be limited solely to matters relevant to the determination of whether the alleged trade secret qualifies for protection.

(e) If the Hearing Officer finds the existence of a valid trade secret which is properly entitled to protection, the Hearing Officer shall issue an appropriate protective order limiting the use, disclosure and dissemination of the trade secret.

SECTION 2.34.80 APPEAL

(1) *City Council Review of Hearing Officer's Order.* Any party to a Proceeding who objects to the Recommended Final Order issued by the Hearing Officer may request a second Proceeding before the City Council of the City of Lodi to review such order. Any request for such a Proceeding shall be filed in writing with the Human Resources Director of the City of Lodi, and a copy served on the City Attorney and shall include the address of the person making the request to which all notices shall be sent. The request shall specifically state whether the party requests an opportunity to present oral argument to the City Council.

(2) *Written Request for City Council Review.* A written request for review must be filed with the Human Resources Director of the City of Lodi and served on the City Attorney for the City of Lodi within ten (10) business days from the date of service of the Hearing Officer's order. The request shall include each of the following:

(a) a complete statement of the reason(s) for requesting a hearing; and

(b) the Respondent's address (and the name and address of legal counsel representing the Respondent, if any) to which all notices shall be sent.

(3) *Determination on Review of Hearing Officer's Order.* If any party has requested oral argument, the City Council of the City of Lodi shall set the time and place of hearing and notify all parties at least fourteen (14) business days prior to the Proceeding unless all objecting parties agree to a shorter time. Unless otherwise authorized by the City Council, oral argument shall be limited to thirty minutes per side. The notice to the party requesting oral argument shall be substantially in the following form, but may include additional information:

You are hereby notified that the requested Proceeding on the record before the Hearing Officer will be held before the City Council at (here insert place of the Proceeding) on the _____ day of _____, 19____, at the hour of _____, on the report of the Hearing Officer dated and which was served on you on _____. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel.

(4) *Statement of Issues and Positions.*

(a) Not later than fourteen (14) business days prior to the hearing date set for the proceeding by the City Council of the City of Lodi, the party(ies) who requested the Proceeding shall file with the Human Resources Director for the City of Lodi and serve upon the Hearing Officer and the City Attorney a succinct, written statement not to exceed ten (10) pages identifying the issues, facts, and legal authorities to be raised at the Proceeding.

(b) Not less than seven (7) business days prior to the Proceeding, the responding party may submit a written statement in response to the Human Resources Director and serve it upon the party requesting review. This written statement shall not exceed ten (10) pages.

(5) *Conduct on Review of Decision.* The Proceeding before the City Council shall be limited to the record of proceedings and evidence presented to the Hearing Officer. No new evidence, not previously presented to the Hearing Officer, may be introduced or argued except upon written notice filed ten (10) business days before the Proceeding demonstrating that: (a) the new evidence was not reasonably available or known of at the time of Proceeding before the Hearing Officer, or (b) substantial justice or fundamental fairness requires consideration of such new evidence and good cause is shown why such evidence was not introduced at the Proceeding before the Hearing Officer.

(6) *Decision.* Within fifteen (15) business days after the Proceeding is concluded, the City Council shall prepare a written decision which shall contain rulings on the objections to the Enforcing Officer's order and the Hearing Officer's decision. Copies of the Council decision shall be delivered as set forth by section 2.34.90. The order as modified or affirmed in whole or in part by the City Council's decision on any matter that has come before him pursuant to this Chapter shall become final and binding in all respects on the Respondent(s) to whom the matter under review was addressed unless a timely petition for Writ of Mandate is filed and perfected in compliance with the requirements of state law. The City of Lodi adopts Cal. Civ. Proc. Code §§ 1094.5 and 1094.6 as the applicable rules of procedure for the judicial review of any final decision of the City Council issued pursuant to this section.

SECTION 2.34.90 NOTICES

All notices required by this Chapter shall be either delivered personally or sent by certified mail, postage prepaid, to the applicant at the address given for purposes of notice on the application.

Section 2 - No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3 - Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 5. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this _____ day of _____, 1999.

KEITH LAND
Mayor

Attest:

ALICE M. REIMCHE
City Clerk

State of California
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No.1683 was introduced at a regular meeting of the City Council of the City of Lodi held November 3, 1999 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 1999 by the following vote:

Ayes: Council Members -

Noes: Council Members -

Absent: Council Members -

Abstain: Council Members -

I further certify that Ordinance No. 1683 was approved and signed by the Mayor of the date of its passage and the same has been published pursuant to law.

ALICE M. REIMCHE
City Clerk

Approved as to Form:


RANDALL A. HAYS
City Attorney